

JAMES McMANIS (40958)  
TYLER ATKINSON (257997)  
ANDREW PARKHURST (324173)  
McMANIS FAULKNER  
A Professional Corporation  
50 West San Fernando Street, 10th Floor  
San Jose, California 95113  
Telephone: (408) 279-8700  
Facsimile: (408) 279-3244  
Email: aparkhurst@mcmanislaw.com

Attorneys for Defendants  
ADVANCED DIGITAL SOLUTIONS INTERNATIONAL, INC.,  
SHAHID SHEIKH, and FARHAAD SHEIKH

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

HEWLETT PACKARD ENTERPRISE  
COMPANY, a Delaware corporation;  
HEWLETT PACKARD ENTERPRISE  
DEVELOPMENT LP, a Delaware  
corporation; and HEWLETT-PACKARD  
DEVELOPMENT COMPANY, L.P., a Texas  
limited partnership,

Plaintiffs,

v.

ADVANCED DIGITAL SOLUTIONS  
INTERNATIONAL, INC., a California  
corporation, SHAHID SHEIKH, an individual,  
and FARHAAD SHEIKH, an individual,

Defendants.

Case No. 3:20-cv-5447 VC

**OPPOSITION TO PLAINTIFFS'  
MOTION FOR LEAVE TO FILE FIRST  
AMENDED COMPLAINT FOR  
DEFENDANTS ADVANCED DIGITAL  
SOLUTIONS INTERNATIONAL, INC.,  
SHAHID SHEIKH, AND FARHAAD  
SHEIKH**

Hearing Date: August 19, 2021  
Time: 2:00 p.m.  
Courtroom: 4, 17th Floor  
Judge: Hon. Vince Chhabria

## INTRODUCTION

Hewlett Packard Enterprise Company, Hewlett Packard Enterprise Development, L.P., and Hewlett Packard Development Company, L.P. (collectively “HPE” or “Plaintiffs”) move to amend their pleading to add both claims and defendants. Defendants oppose Plaintiffs’ request for leave to amend on the ground that amendment to add Kamran Sheikh a year after this case was filed constitutes an undue delay substantially likely to prejudice Kamran Sheikh in defending himself in this litigation. Further, the allegations in the proposed First Amended Complaint (“FAC”) that pertain to Kamran Sheikh are so devoid of substance that amendment would be futile.

Kamran Sheikh is the son of Shahid Sheikh and brother to Farhaad Sheikh. Kamran Sheikh’s involvement with Advanced Digital Systems International, Inc. (“ADSI”), has been limited since it was founded by his parents in 1991. HPE and its counsel, Mr. Richard Nelson, have known of Kamran Sheikh since at least 2018. Indeed, Mr. Nelson served as counsel for Cisco Systems, Inc., in another matter against ADSI, Kamran Sheikh, and other members of the Sheikh family that settled in November, 2020. The proposed amendment to the complaint regarding Kamran Sheikh includes no allegations that were not already known to HPE as of the date of the original complaint. Amendment is futile because the allegations against Kamran Sheikh in the proposed FAC fail to state any facts that could give rise to a claim for relief. Leave to amend as to Kamran Sheikh should be denied.<sup>1</sup>

## ARGUMENT

### **I. Legal Standard**

Federal Rule of Civil Procedure 15 provides that leave to amend shall be freely given “when justice so requires.” Fed. R. Civ. P. 15(a)(2); *see In re Graphics Processing Units Antitrust Litig.*, 540 F. Supp. 2d 1085, 1090 (N.D. Cal. 2007) (“This standard is applied

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<sup>1</sup> Defendants do not oppose leave to amend as to the additional allegations in the proposed FAC or as to the addition of K&F Associates, LLC, as an entity defendant. However, Defendants reserve, and expressly do not waive, their right to challenge the proposed FAC, and any other later pleadings, and raise any of the arguments contained in this opposition in support of those challenges.

liberally.”). However, liberality of amendment does not mean the Court is required to grant leave to amend. *See Snapkeys, Ltd. v. Google LLC*, No. 19-CV-02658-LHK, 2021 WL 1839700, at \*1 (N.D. Cal. May 8, 2021) (denying leave to amend). In the Ninth Circuit there are five factors the District Court must consider in deciding whether to grant leave to amend: “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, and futility of amendment.” *In re Bofl Holding, Inc. S’holder Litig.*, 848 F. App’x 234, 238 (9th Cir. 2021) (citations omitted).

## **II. Leave To Amend Should Not Be Granted With Respect To Kamran Sheikh.**

### **a. Undue Delay and Prejudice**

“Delay alone no matter how lengthy is an insufficient ground for denial of leave to amend.” *Yates v. W. Contra Costa Unified Sch. Dist.*, No. 16-CV-01077-MEJ, 2017 WL 57308, at \*2 (N.D. Cal. Jan. 5, 2017) (citations omitted). “However, undue delay combined with other factors may warrant denial of leave to amend,” such as where prejudice and undue delay are present. *Id.* “Whether the moving party knew or should have known the facts and theories raised in the proposed amendment at the time it filed its original pleadings is a relevant consideration in assessing untimeliness.” *Id.* “Late amendments to assert new theories are not reviewed favorably when the facts and the theory have been known to the party seeking amendment since the inception of the cause of action.” *Id.* (citing *Acri v. Int’l Ass’n of Machinists & Aerospace Workers*, 781 F.2d 1393, 1398 (9th Cir. 1986).)

HPE and its counsel have known about Karman Sheikh’s connection to the ADSI family business for more than three (3) years. He was named in a lawsuit brought by Cisco Systems, Inc. (“Cisco”) in December, 2018. HPE’s counsel, Mr. Nelson, was also counsel for Cisco against the same Defendants in the previous matter (the “Cisco matter”). Mr. Nelson took Kamran Sheikh’s deposition in the Cisco matter several months before the original complaint was filed in this case and represented Cisco in settling the case before trial, including a settlement with Kamran Sheikh.

HPE was aware of Kamran Sheikh more than a year before filing its original complaint. Despite HPE's proposed FAC making few references to Kamran Sheikh, HPE does point to one instance where in 2019 he was copied on an email between ADSI employees and a HPE representative. (Dkt. 35, Exh. B, p. 15.) HPE's knowledge of Kamran Sheikh at the time it filed its original complaint, and its decision to forego adding him as a defendant, constitutes an undue delay that prejudices Kamran Sheikh's ability to defend himself in this litigation by starting a year behind the other litigants.

Furthermore, the proposed FAC does not add any claims or allegations against Kamran Sheikh that were not known to HPE at the time it filed its original complaint. The allegations against Kamran Sheikh only appear (1) in the context of the allegations from the Cisco matter, (2) in a conclusory statement that Kamran Sheikh, along with Shahid and Farhaad Sheikh, oversaw ADSI and the alleged misconduct, and (3) in a single reference to an email on which he was copied in March, 2019 that HPE alleges shows ADSI sales associates misrepresenting their entitlement to certain sales incentives compensation. (*See* Dkt. 35, Exh. B, p. 10, 14-15.) Each of these allegations, which are trivial and insufficient to state a claim (see below), was known to HPE as the time it filed its original complaint.

HPE's undue delay in adding Kamran Sheikh merits denial of leave to amend to add him as a defendant.

#### **b. Futility of Amendment**

"A motion for leave to amend may be denied if it appears to be futile or legally insufficient." *Align Tech., Inc. v. Strauss Diamond Instruments, Inc.*, No. 18-CV-06663-TSH, 2019 WL 861422, at \*3 (N.D. Cal. Feb. 22, 2019). As described above, HPE presumably did not include Kamran Sheikh in its original complaint because it lacked any basis to do so. The proposed FAC makes obvious that nothing has changed. The proposed FAC makes no individual allegations against Kamran Sheikh that pertain to HPE's claims. Five out of the eight instances where Kamran Sheikh's name appears substantively in the proposed FAC are in reference to the Cisco lawsuit settled in November, 2020. (Dkt. 35, Exh. B, p. 10.) The Cisco-

related allegations included in the proposed FAC are merely the same allegations that Cisco made against Kamran Sheikh and others. The allegations share no nexus to the facts of this case.

The other two substantive references in the proposed FAC to Kamran Sheikh are equally scanty. HPE's proposed FAC alleges in conclusory fashion that ADSI's alleged misconduct was "directed by and overseen by Shahid Sheikh and his sons Kamran and Farhaad 'Freddy' Sheikh." (*Id.*, p. 14) HPE's final allegation that names Kamran Sheikh states only that he was copied on a single email chain with Shahid Sheikh and Farhaad Sheikh that HPE alleges evidences an attempt by ADSI sales team members to fraudulently claim sales incentives bonuses from HPE. (*Id.*, p. 15.)

In sum, the allegations added against Kamran Sheikh in the proposed FAC appear to be nothing more than an attempt to tie him to allegations previously filed against Shahid and Farhaad Sheikh without adding any more substance to justify Kamran's inclusion.

Leave to amend the complaint to add Kamran Sheikh should be denied.

### CONCLUSION

With respect to Kamran Sheikh, defendants ask that the Court deny plaintiffs' request to amend because the proposed amendments are brought with undue delay, they prejudice Kamran Sheikh, and they are futile in light of the insufficiency of the allegations added to the proposed FAC.

DATED: July 16, 2021

McMANIS FAULKNER

/s/ Andrew Parkhurst

JAMES MCMANIS

ANDREW PARKHURST

Attorneys for Defendants ADVANCED DIGITAL  
SOLUTIONS INTERNATIONAL, INC., SHAHID  
SHEIKH, and FARHAAD SHEIKH